IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 896 of 2006 (M/B)

Date of decision: 28th July, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date: 28.07.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 896 of 2006 (M/B)

1. Sushila Devi W/o Sewa Ram Balmiki,
   R/o Laltaro Bridge, Haridwar.
2. Kishan S/o Laxman,
   R/o Laltaro Bridge, Haridwar.
3. Sushil Kumar S/o Kashi Ram Gihar,
   R/o Indra Basti, Near State Bank, Jwalapur, Haridwar.
4. Kishan Chand S/o Raj Rani,
   R/o 198/44A, Brahmapur, Haridwar.
5. Kamala Rani W/o Jai Prakash Kashyap,
   R/o Balmiki Basti, Bilkeshwer Road, Haridwar.
6. Rohit Kumar S/o Sri Raj Kumar,
   R/o Behind Kotwali, Mohalla Kashipura, Haridwar.
7. Km. Durgesh Bhadoriya D/o Jamned Singh Bhadoriya,
   Laltaro Bridge, Haridwar.
8. Km. Khushbu Bhadoriya D/o Jamned Singh Bhadoriya,
   Laltaro Bridge, Haridwar.
9. Sanjay Yadav S/o Balmukund Yadav,
   R/o Laltaro Bridge, Haridwar.
10. Balbir Mistri S/o Ramlal,
    R/o Lal Mandir Colony, Jwalapur, Haridwar.
11. Raj Kumar Yadav S/o Bale Singh Yadav,
    R/o Laltaro Bridge, Haridwar.
12. Kamal Singh Chetri S/o Gopal Singh Chetri,
    R/o Industrial Area, Indra Basti, Haridwar.
13. Kaushlya Devi W/o Late Purnanand Bhatt,
    R/o Laltaro Bridge, Haridwar.
14. Virendra Kumar S/o Babu Ram,
    R/o Laltaro Bridge, Haridwar.
15. Mohit Kumar S/o Sewa Ram,
    R/o Laltaro Bridge, Haridwar.
16. Vinod Kumar S/o Mohan Singh,
    R/o Laltaro Bridge, Haridwar.
17. Dhram Pal S/o Nathu Ram,
    R/o Laltaro Bridge, Haridwar.
18. Saleem Salmani S/o Anwar Salmani,
    R/o Laltaro Bridge, Haridwar.
19. Bachan Singh S/o Nathu Singh,
    Laltaro Bridge, Haridwar.
20. Karnpal Singh S/o Phool Singh,
    R/o Laltaro Bridge, Haridwar.
21. Sachin Kumra S/o Late Sudesh Kumar,
    R/o Laltaro Bridge, Haridwar.
22. Raj Pal S/o Rati Ram,
    R/o Indira Basti, Near State Bank, Jwalapur, Haridwar.
23. Satish Kumar S/o Nathu Ram,
    Laltaro Bridge, Haridwar. ..... Petitioners

Versus

1. State of Uttaranchal,
   through Collector, Haridwar.
2. The Chairman through Executive Officer,
   Nagar Palika Parishad, Haridwar.
3. Haridwar Development Authority,
   through its Chairman. ..... Respondents

Mr. Lalit Tewari,, Advocate for the petitioners.
Mr. N.B. Tewari, Chief Standing Counsel for respondent No. 1.
Mr. Pankaj Miglani, Advocate for respondent No.2.
Ms. Puja Banga, Advocate for respondent No. 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. Lalit Tewari, Advocate for the petitioners.

Mr. N.B. Tewari, Chief Standing Counsel for respondent No. 1.

Mr. Pankaj Miglani, Advocate for respondent No.2.

Ms. Puja Banga, Advocate for respondent No. 3.

They are heard on admission.

2. The petitioners have filed this writ petition for the following reliefs:

> "a) Issue a writ, order or direction in the nature of mandamus directing the respondents no. 2 not to demolish the shops of the petitioners without disposing the objection of the petitioners in accordance with law.
> b) Issue a writ, order or direction in the nature of mandamus directing the respondents no. 2 not to demolish the shops of the petitioners without adopting due process of law.
> c) Award cost of petition.
> d) Pass such order which this Hon'ble court deem just and proper in the circumstances of the present case."

3. Mr. Pankaj Miglani, the learned counsel for respondent No. 2 has raised a preliminary objection about the maintainability of the writ

petition on the ground that petitioners Nos. 7 & 8 Km. Durgesh Bhadoriya and Km. Khushbu Bhadoriya had earlier filed a writ petition, which came to be registered as Writ Petition No. 847 of 2006 (M/B) and the same was dismissed as withdrawn vide order dated 19.07.2006 and the petitioners instead of mentioning the fact of the filing of the earlier writ petition and its dismissal vide order dated 19.07.2006 in this writ petition have made a false declaration in para 1 that this is first writ petition by the petitioners.

4. Para 1 of the writ petition reads as follows:

> "1. That this is the first writ petition filed by the petitioners above named before this Hon'ble Court seeking a writ, order or direction in the nature of mandamus direction the respondents not to demolish the shop (Khokha) of the petitioners without disposing of the objection / representation of the petitioners in accordance with law which was sent by them in reply of markation of shops for demolition."

5. Mr. Lalit Tewari, the learned counsel for the petitioners, when confronted with the above situation, submitted that the present writ petition is filed on account of a fresh cause of action after the dismissal of the earlier writ petition [W.P. No. 847 of 2006 (M/B)] Vide order dated 19.07.2006.

6. The earlier writ petition filed by petitioners Nos. 7 & 8 Km. Durgesh Bhadoriya and Km. Khushbu Bhadoriya [W.P. No. 847 of 2006 (M/B)] came to be dismissed on 19.07.2006 with the following order:

> "Mr. Latit Tewari, Advocate for the petitioners.
>
> Mr. N.B. Tewari, Chief Standing Counsel for respondent No. 1.
>
> Mr. Pankaj Miglani, Advocate for respondent No. 2.
>
> None for respondent No. 3.

2. Mr. Lalit Tewari, the learned counsel for the petitioners seeks permission to withdraw the writ petition.

3. Permission granted.

4. The writ petition, therefore, is dismissed as withdrawn.

5. Consequently, CLMA No. 8970 of 2006 also stands dismissed as withdrawn.

7. On a perusal of the contents; prayers and the Annexures of the two writ petitions, we have no manner of doubt that the subject matter of both the writ petitions is the same.

8. The petitioners Nos. 7 & 8 Km. Durgesh Bhadoriya and Km. Khushbu Bhadoriya, therefore, are apparently guilty of suppressing the material fact of the filing of the earlier writ petition [W.P. No. 847 of 2006 (M/B) and its dismissal, though as withdrawn, vide order dated 19.07.2006. As these petitioners in Writ Petition No. 847 of 2006 (M/B) did not seek liberty to file a fresh writ petition, the present writ petition, apparently, is not maintainable and is liable to be dismissed.

9. The writ petition, therefore, is dismissed summarily.

10. Consequently, CLMA No. 9473 of 2006 also stands dismissed.

(Prafulla C. Pant, J.) 28.07.2006

(Rajeev Gupta, C. J.) 28.07.2006

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